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International Residual Mechanism for Criminal Tribunals

Election of two judges to the roster of the International Residual Mechanism for Criminal Tribunals

Memorandum by the Secretary-General

I. Introduction

1. By its resolution 1966 (2010) of 22 December 2010, the Security Council decided to establish the International Residual Mechanism for Criminal Tribunals with two branches, to commence functioning on 1 July 2012 (branch for the International Criminal Tribunal for Rwanda) and 1 July 2013 (branch for the International Tribunal for the former Yugoslavia), respectively.

2. In accordance with article 8 of the statute of the Mechanism, the Mechanism shall have a roster of 25 independent judges, not more than two of whom may be nationals of the same State.

3. The terms of office of the 25 judges on the roster of the Mechanism were set to expire on 30 June 2018. On 22 June 2018, the Secretary-General informed the President of the General Assembly and the President of the Security Council that, pursuant to article 10, paragraph 3, of the statute, he intended to reappoint 23 of the 25 judges. The Secretary-General received responses from the President of the Security Council and the President of the General Assembly on 26 June 2018 and 27 June 2018, respectively. On 29 June 2018, the Secretary-General informed the President of the Security Council that he was proceeding with the reappointment of 23 of the 25 judges (S/2018/652).

4. As set out in his letter dated 2 August 2018 (S/2018/756), the President of the Security Council informed the Secretary-General that the members of the Council had carefully analysed the current situation in the Mechanism and reasonably expected that filling the two vacant positions would assist in the effective and timely implementation of the Mechanism's mandate in accordance with resolution 1966 (2010). They had therefore decided that two judges should be elected to the roster of judges of the Mechanism in accordance with article 10 of the statute. The Council therefore requested that the Secretary-General invite States to submit nominations within a period of 60 days. From the nominations received, the Council would establish a list of not less than three candidates, or, should there be only two

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nominations, a list of two candidates, taking due account of the qualifications set out in article 9, paragraph 1, of the statute and adequate representation of the principal legal systems of the world, as well as the nationalities of the current judges of the Mechanism.

5. The President of the Security Council further informed the Secretary-General that the term of office of the two elected judges would terminate at the same time as the term of office of the judges who were currently on the roster, namely, 30 June 2020.

6. In accordance with article 10, paragraph 3, of the statute, the judges shall be eligible for reappointment by the Secretary-General after consultation with the Presidents of the Security Council and the General Assembly.

7. Pursuant to the letter from the President of the Security Council dated 2 August 2018 and in accordance with article 10, paragraph 1 (a), of the statute, the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, on behalf of the Secretary-General, by a letter dated 16 August 2018, invited all States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters to submit their nominations of up to two candidates for the roster of judges of the Mechanism. In his letter, the Legal Counsel also invited them, in line with United Nations policies, to give due consideration to nominating suitably qualified women candidates.

8. In a letter dated 25 October 2018 addressed to the President of the Security Council (S/2018/963), the Secretary-General, in accordance with article 10, paragraph 1(c), of the statute, forwarded to the Council the eight nominations that had been received within the designated period for submission. On 1 November 2018, the Legal Counsel wrote to the President of the Security Council informing him of one nomination that had been received after the deadline. On 13 November 2018, the Assistant Secretary-General in charge of the Office of Legal Affairs wrote to the President of the Security Council informing him of two additional nominations that had been received after the deadline.

9. The Security Council considered the nominations received by the Secretary-General. The President of the Security Council transmitted a list of 11 candidates to the General Assembly. In accordance with article 10, paragraph 1 (d), of the statute, the list was formally conveyed by means of a letter dated 16 November 2018 from the President of the Security Council to the President of the General Assembly.

10. The list of candidates for judges of the Mechanism and the procedure for the election of judges of the Mechanism are set out below. The curricula vitae of the candidates have been transmitted to the General Assembly in a separate document (A/73/566).

II. List of candidates for judges of the Mechanism

11. The list of candidates for judges of the Mechanism is as follows:

Yusuf Aksar (Turkey)
Mohammed Benhammou (Morocco)
Aboubacar Demba Camara (Guinea)
Mustapha El Baaj (Morocco)
Constant K. Hometowu (Ghana)
Guénaël Mettraux (Switzerland)
Hafiz Nasibov (Azerbaijan)
Michael A. Newton (United States of America)

Mame Mandiaye Niang (Senegal)
Elyakim Rubinstein (Israel)
Moussa Sampil (Guinea)

III. Procedure for the election of judges

12. The election of judges will take place in accordance with articles 9 and 10, paragraph 1, of the statute of the Mechanism.

13. At the first election of judges to the Mechanism, held during the sixty-sixth session of the General Assembly, the Secretary-General proposed that, given the similarities in the election of judges of the International Court of Justice, of the International Tribunal for the Former Yugoslavia and of the International Criminal Tribunal for Rwanda, those precedents be followed and rule 151 of the rules of procedure of the General Assembly be applied with regard to the election of the judges of the Mechanism. Accordingly, if the number of candidates who receive the required majority is greater than the number of seats available, the General Assembly will hold a new ballot with respect to all available seats, and all candidates will be eligible in that ballot.

14. However, at the first election of 25 judges of the Mechanism, held during the 87th plenary meeting of the sixty-sixth session of the General Assembly, on 16 December 2011, the Assembly decided that, in the event that more than 25 candidates obtained an absolute majority of votes, the 25 with the highest number of votes would be considered elected and, in the event of a tie vote for a remaining seat, there would be a restricted ballot limited to the candidates who had received an equal number of votes. Accordingly, the Assembly may wish to consider following the decision taken at the above-mentioned plenary meeting with respect to the current election.

15. In accordance with article 10, paragraph 1 (d), of the statute, the Holy See and the State of Palestine, as non-member States that maintain permanent observer missions at United Nations Headquarters, will participate in the election in the same manner as the States Members of the United Nations.

16. On the date of the election, the General Assembly will elect two judges for the roster of the Mechanism from the list of candidates submitted to it by the Security Council, as set out in paragraph 11 above.

17. According to article 9, paragraph 1, of the statute, judges of the Mechanism shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. Particular account shall be taken of experience as judges of the International Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda. According to article 9, paragraph 2, of the statute, due account shall be taken, in the composition of the Trial and Appeals Chambers, of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

18. In accordance with article 10, paragraph 1 (d), of the statute, the candidates who receive an absolute majority of the votes of States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected.

19. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors, whether or not they vote or are allowed to vote. The electors in the General Assembly for current purposes are all

193 Member States, together with the two non-member States mentioned in paragraph 15 above. Accordingly, 98 votes constitute an absolute majority in the Assembly for the purpose of the present election.

20. Only candidates whose names appear on the ballot papers are eligible for election. The electors will indicate the candidates for whom they wish to vote by placing crosses against their names on the ballot papers. Each elector may vote in the first ballot for no more than two candidates.

21. Should the General Assembly decide to apply the procedure described in paragraph 14 above, if, in the first ballot, more than two candidates obtain an absolute majority, the two candidates obtaining the highest number of votes will be considered elected.

22. If, in the first ballot, no candidate obtains an absolute majority or only one candidate obtains an absolute majority, a second ballot will be held for the remaining seat or remaining seats. In any second or subsequent ballot, each elector may vote for no more than two candidates if no candidate has obtained an absolute majority. If one candidate has already obtained an absolute majority, each elector may vote for no more than one candidate. In the event of a tie vote for a remaining seat, there will be a restricted ballot limited to the candidates who received an equal number of votes.

23. Following the past practice, any second and subsequent balloting will be unrestricted. Votes may accordingly be cast in any second or subsequent ballot for any eligible candidate who has not yet been elected.

24. Two candidates obtaining the required majority and the highest number of votes will be declared elected by the President of the General Assembly.